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Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

ALLISON BURNS as Next Friend to
LDT a Minor Child, an individual,

Plaintiff,

v.

SAHARA HOSPITALITY, LLC, a
Nevada Limited Liability Company, dba
Holiday Inn Express, 8669 WEST
SAHARA AVE., LAS VEGAS, NV
89117,

Defendant.

CASE NO. 2:10-CV-01255-GMN-
(LRL)

Honorable Gloria M. Navarro

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

JURY DEMAND

Defendant SAHARA HOSPITALITY, LLC, dba HOLIDAY INN EXPRESS, by and through its attorneys, HOWARD C. KIM & ASSOCIATES, submits its ANSWER AND AFFIRMATIVE DEFENSES to the Complaint on file herein, and admits, denies, and alleges as follows:

Except as hereafter expressly admitted, defendant denies each and every allegation set for in Plaintiff's complaint.

Defendant answers in paragraphs numbered to correspond to the paragraph

1 numbers in said Complaint:

2 No response is required to the allegations in the introduction, which are the
3 Plaintiff's characterization of her claims but, to the extent a response is necessary,
4 defendant denies the allegations in the paragraph and denies any unlawful conduct.

5 **JURISDICTION AND PARTIES**

6 1. Defendant admits that Plaintiff purports to bring such claims alleged
7 in Paragraph 1 and that this Court has jurisdiction to consider properly filed claims
8 brought under the ADA, but denies any wrongful conduct.

9 2. Defendant admits that venue is proper in this Court but lacks
10 sufficient information to form a belief as to the truth or falsity of and,
11 therefore, denies the remainder of the allegations in Paragraph 2.

12 3. Paragraph 3 states a conclusion of law to which no response is
13 necessary, but to the extent a response is required, defendant denies the allegations
14 contained therein.

15 4. Defendant admits that it has a facility known as The Holiday Inn
16 Express , located at 8669 West Sahara Ave., Las Vegas, Nevada 89117, but denies
17 any wrongful conduct and lacks sufficient information to form a belief as to
18 the truth or falsity of and, therefore, denies the remainder of the
19 allegations contained therein.

20 5. Defendant lacks sufficient information to form a belief as to
21 the truth or falsity of and, therefore, denies the allegations in Paragraph 5.

22 6. Paragraph 6 states a conclusion of law to which no response is
23 necessary as to compliance with the ADA, but to the extent a response is required,
24 defendant denies the allegations contained therein. Defendant lacks sufficient
25 information to form a belief as to the truth or falsity of and, therefore,
26 denies the remainder of the allegations in Paragraph 6.

27 7. Defendant admits the allegations in Paragraph 7.

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8. Defendant denies the allegations in Paragraph 8.

9. Defendant admits the allegations in Paragraph 9.

10. Paragraph 10 states conclusions of law to which no response is necessary. To the extent a response is required, defendant admits that it owns, operates, leases, or leases to Holiday Inn Express Hotel, located at 8669 West Sahara Ave, Las Vegas, Nevada 89117, and that the Holiday Inn Express Hotel is a place of public accommodation under the ADA, but denies that these allegations represent a true and complete recitation of the Act's provisions and deny any unlawful derivative conduct.

11. Defendant admits the premises are located in the State of Nevada and that it does business in the State of Nevada, but defendant lacks sufficient information to form a belief as to the truth or falsity of, and therefore, denies the remainder of the allegations in Paragraph 11.

12. Defendant admits that jurisdiction is proper in this Court and that this Court has supplemental jurisdiction over Plaintiff's state law claims, but denies any allegations of wrongdoing contained in Paragraph 12.

COUNT I

VIOLATIONS OF THE ADA

Defendant incorporates answers to paragraphs 1 through 12 as though fully set forth herein.

13. Defendant admits the allegations in Paragraph 13.

14. Defendant admits the allegations in Paragraph 14 represent the 1990 version of 42 U.S.C. § 12101(a)(1)-(3), (5) and (9), but denies the allegations as stated, and deny any wrongful derivative conduct.

15. Defendant admits the allegations in Paragraph 15 represent the 1990 version of 42 U.S.C. § 12101(b)(1), (2) and (4), but denies any wrongful derivative conduct.

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1 16. Paragraph 16 states a conclusion of law to which no response is
2 necessary. To the extent a response is required, defendant admits that the Property
3 is a place of public accommodation that provides lodging and other services to the
4 public, but denies that these allegations represent a true and complete recitation of
5 the Act's provisions and deny any unlawful derivative conduct. Defendant denies
6 the remainder of the allegations in Paragraph 16.

7 17. Paragraph 17 states a conclusion of law to which no response is
8 necessary. To the extent a response is required, defendant admits the building
9 and/or subject facility is a public accommodation covered by the ADA, but denies
10 that these allegations represent a true and complete recitation of the Act's
11 provisions and denies any unlawful derivative conduct.

12 18. Defendant admits the allegations in Paragraph 18.

13 19. Defendant denies the allegations in Paragraph 19, and denies any
14 unlawful conduct.

15 20. Defendant lacks sufficient information to form a belief as to
16 the truth or falsity of and, therefore, denies the allegations in Paragraph
17 20.

18 21. Defendant denies the allegations in Paragraph 21, and denies any
19 unlawful conduct.

20 22. Paragraph 22 states conclusions of law to which no response is
21 necessary, but to the extent a response is required, defendant denies the allegations
22 contained therein.

23 23. Paragraph 23 states conclusions of law to which no response is
24 necessary, but to the extent a response is required, Defendant denies the allegations
25 contained therein, except to refer to the statutory language referenced therein
26 which speaks for itself.
27
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24. Paragraph 24 states conclusions of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

A. Parking

1. Subparagraph A(1) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

2. Subparagraph A(2) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

3. Subparagraph A(3) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

4. Subparagraph A(4) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

5. Subparagraph A(5) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

6. Subparagraph A(6) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

B. Entrance Access and Path of Travel

1. Subparagraph B(1) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

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2. Subparagraph B(2) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

3. Subparagraph B(3) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

4. Subparagraph B(4) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

5. Subparagraph B(5) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

6. Subparagraph B(6) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

C. Access to Goods and Services

1. Subparagraph C(1) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

2. Subparagraph C(2) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

3. Subparagraph C(3) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

1 4. Subparagraph C(4) states a conclusions of law to which no
2 response is necessary, but to the extent a response is required, defendant denies the
3 allegations contained therein and denies any unlawful conduct.

4 **D. Accessible Guest Rooms**

5 1. Subparagraph D(1) states a conclusion of law to which no
6 response is necessary, but to the extent a response is required, defendant denies the
7 allegations contained therein and denies any unlawful conduct.

8 2. Subparagraph D(2) states a conclusion of law to which no
9 response is necessary, but to the extent a response is required, defendant denies the
10 allegations contained therein and denies any unlawful conduct.

11 3. Subparagraph D(3) states a conclusion of law to which no
12 response is necessary, but to the extent a response is required, defendant denies the
13 allegations contained therein and denies any unlawful conduct.

14 4. Subparagraph D(4) states a conclusion of law to which no
15 response is necessary, but to the extent a response is required, defendant denies the
16 allegations contained therein and denies any unlawful conduct.

17 5. Subparagraph D(5) states a conclusion of law to which no
18 response is necessary, but to the extent a response is required, defendant denies the
19 allegations contained therein and denies any unlawful conduct.

20 6. Subparagraph D(6) states a conclusion of law to which no
21 response is necessary, but to the extent a response is required, defendant denies the
22 allegations contained therein and denies any unlawful conduct.

23 7. Subparagraph D(7) states a conclusion of law to which no
24 response is necessary, but to the extent a response is required, defendant denies the
25 allegations contained therein and denies any unlawful conduct.

8. Subparagraph D(8) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

9. Subparagraph D(9) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

10. Subparagraph D(10) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

E. Elevators

1. Subparagraph E(1) states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein and denies any unlawful conduct.

25. Paragraph 25 states conclusions of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein, except to refer to the cited case law referenced therein which, without added emphasis, speaks for itself.

26. No response is required to the allegations in Paragraph 26, which are the Plaintiff's characterization of her claims but, to the extent a response is necessary, defendant denies the allegations in the paragraph and denies any unlawful conduct.

27. No response is required to the allegations in Paragraph 27, which are the Plaintiff's characterization of her claims but, to the extent a response is necessary, defendant denies the allegations in the paragraph and denies any unlawful conduct.

28. Paragraph 28 states a conclusion of law as to attorney fees, costs and litigation expenses, to which no response is necessary, but to the extent a response

1 is required, defendant denies the allegations contained therein, except to refer to
2 the statutory language referenced therein which speaks for itself, and denies the
3 remainder of the allegations in Paragraph 28.

4 29. Paragraph 29 states conclusions of law to which no response is
5 necessary, but to the extent a response is required, Defendant admits that the Act
6 makes requirements regarding removal of architectural barriers, but denies the
7 allegations contained therein, except to refer to the statutory sections referenced
8 therein which speak for themselves.

9 30. Paragraph 30 states conclusions of law to which no response is
10 necessary but, to the extent a response is required, denies the allegations contained
11 therein.

12 31. Paragraph 31 states conclusions of law to which no response is
13 necessary, but to the extent a response is required, defendant admits this Court has
14 the authority to enforce the ADA but denies the allegations contained therein and
15 denies any unlawful conduct.

16 32. Defendant admits the subject property was built sometime after
17 January 28, 1992, but as to the remainder of Paragraph 32, defendant denies the
18 allegations contained therein and denies any unlawful conduct.

19 33. Paragraph 33 states a conclusions of law to which no response is
20 necessary, but to the extent a response is required, defendant denies the allegations
21 contained therein and denies any unlawful conduct.

22 34. Defendant denies the allegations in Paragraph 34 and denies any
23 unlawful conduct.

24 35. Defendant denies the allegations in Paragraph 34 and denies any
25 unlawful conduct.

26 36. Paragraph 36 states conclusions of law to which no response is
27 necessary, but to the extent a response is required, Defendant admits the ADA
28

1 requires compliance for places of public accommodation, but denies that these
2 allegations represent a true and complete recitation of the Act's provisions and
3 denies any unlawful derivative conduct. Furthermore, defendant denies the
4 remainder of the allegations contained in Paragraph 36 and denies the allegations
5 contained therein.

6 37. Defendant denies that Plaintiff has been obligated to retain counsel.
7 The remainder of Paragraph 37 states a conclusion of law to which no response is
8 necessary but, to the extent a response is require, defendant denies the allegations
9 contained therein and denies any unlawful conduct.

10 38. Paragraph 38 states conclusions of law to which no response is
11 necessary but, to the extent a response is required, Defendant admits this Court has
12 authority to grant relief for properly proved claims under the ADA but denies the
13 remainder of the allegations contained therein and denies any unlawful conduct.

14 COUNT II

15 VIOLATION OF THE NEVADA LAW AGAINST DISCRIMINATION—NEVADA ADA 16 (VIOLATION OF NEVADA REVISED STATUTES 651.070 ET SEQ.)

17 39. Defendant incorporates answers to paragraphs 1 through 38 as though
18 fully set forth herein.

19 40. Defendant admits that 28 U.S.C. § 1367 grants this Court pendant and
20 supplemental jurisdiction, but denies any wrongful conduct.

21 41. Defendant denies the allegations in Paragraph 41 and denies any
22 unlawful conduct.

23 42. Paragraph 42 states a conclusion of law to which no response is
24 necessary, but to the extent a response is required, defendant denies the allegations
25 contained therein, except for the statutory language referenced therein which
26 speaks for itself.

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43. Paragraph 43 states a conclusion of law to which no response is necessary, but to the extent a response is required, defendant denies the allegations contained therein.

44. Defendant admits it was and is required to comply with federal and state laws, but denies any wrongful derivative conduct.

45. Defendant states that Paragraph 45 states conclusions of law to and requests for relief to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 45 and denies any unlawful conduct or that Plaintiff is entitled to any relief whatsoever.

46. Defendant states that Paragraph 46 states conclusions of law to and requests for relief to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 46 and denies any unlawful conduct or that Plaintiff is entitled to any relief whatsoever.

47. Defendant states that Paragraph 47 states conclusions of law to and requests for relief to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 47 and denies any unlawful conduct or that Plaintiff is entitled to any relief whatsoever.

Defendant states that the remainder of the Complaint consists of conclusions of law and Plaintiff's request for relief to which no response is required. To the extent a response is required, defendant denies the allegations contained therein and that Plaintiff is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint and each purported cause of action asserted against Defendant fail to set forth facts sufficient to constitute a claim and/or state a claim upon which relief may be granted.

2. Plaintiff lacks standing to bring the causes of action asserted in her complaint and, to the extent she has standing to bring this Complaint, Plaintiff

1 lacks standing to challenge any alleged barriers not specifically identified and set
2 forth in the Complaint and/or related to LDT's alleged disability.

3 3. Plaintiff's claims are barred because the proposed alterations are not
4 readily achievable.

5 4. If Defendant is responsible in any respect for any injuries or damages
6 suffered by Plaintiff, which Defendant expressly denies, such injuries or damages
7 have been caused by or contributed to by Plaintiff or others, and Defendant's
8 proportional liability, if any, should be reduced to the extent thereof.

9 5. The accommodations requested by Plaintiff and/or removal of the
10 alleged structural barriers to access of persons with disabilities, which Defendant
11 expressly denies exist, are not readily achievable, nor are alternative methods
12 readily achievable, easily accomplished, technically feasible, would create safety
13 hazards, and/or result in an undue burden on Defendant and others.

14 6. Plaintiff's claims are barred by the doctrines of estoppel and waiver as
15 Plaintiff failed to take reasonable measures to learn of or use the accessible
16 facilities at the Subject Property and Facility. Further, Plaintiff failed to request
17 any adaptations, modifications, alternative services, or other changes to the Subject
18 Property and Facility prior to initiating the instant lawsuit.

19 7. Plaintiff did not intentionally impede or impair access to Plaintiff, and
20 states that to the extent that any alleged discriminatory conduct occurred, which it
21 did not, that such conduct was not intentional.

22 8. Plaintiff's claims are barred to the extent that she has acted as a tester
23 for the ADAPR, which is a vexatious litigant.

24 9. Some of the foregoing Affirmative Defenses have been plead for
25 purpose of non-waiver. DEFENDANT has not concluded discovery in this matter
26 and under FRCP 11 specifically reserves the right to amend this Answer to include
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1 additional Affirmative Defenses and Cross-Claims and Counter-Claims if
2 discovery of fact so warrant.

3 **Conclusion**

4 WHEREFORE, Defendant SAHARA HOSPITALITY, LLC, dba HOLIDAY INN
5 EXPRESS, prays as follows:

- 6 1. That the Plaintiff take nothing by reason of her Complaint;
7 2. That the Plaintiff's Complaint be dismissed with prejudice;
8 3. That DEFENDANT is awarded his reasonable attorney fees and costs
9 of suit incurred in defense of this action; and
10 4. For such other further relief as the Court may deem just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Defendant hereby demands a trial by jury on all issues so triable as a matter
13 of right.

14
15 DATED this 22nd day of October, 2010.

16 HOWARD KIM & ASSOCIATES

17 /s/ Howard C. Kim

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22 *SAHARA HOSPITALITY, LLC,*

23 *dba HOLIDAY INN EXPRESS*

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CERTIFICATE OF SERVICE

I, Jacqueline A. Gilbert, hereby certify that I electronically filed a copy of defendant's "Answer" to all counsel of record via the CM/ECF system on October 22, 2010, with a hard copy to be served on plaintiff's counsel via U.S. Mail delivery, postage prepaid:

David J. Otto, Attorney
DAVID OTTO & AFFILIATES, PC
2300 W. Sahara Ave., Suite 800
Las Vegas, Nevada 89102

Attorneys for Plaintiff

Dated this 22nd day of October, 2010

HOWARD KIM & ASSOCIATES

/s/ Jacqueline A. Gilbert
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